

**IN THE HIGH COURT OF JUDICATURE OF RAJASTHAN AT  
JODHPUR**

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Mukesh & Ors. Vs. The New India Assurance  
Co. Ltd. & Ors.

**S.B. CIVIL MISC. APPEAL NO.1344/2006.**

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Mukesh & Ors. Vs. The New India Assurance  
Co. Ltd. & Ors.

**S.B. CIVIL MISC. APPEAL NO.1462/2006.**

Against the common award dated  
29.09.2005 made by the Motor Accidents  
Claims Tribunal, Chittorgarh in Claim  
Case Nos.549/2003 and 553/2003.

Date of Order :::: 3<sup>rd</sup> April 2007.

**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Mr. Manish Pitaliya, for the appellants.

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These two appeals for enhancement, CMA  
Nos.1344/2006 and 1462/2006, preferred by the same  
claimants against the common award dated 29.09.2005 made  
by the Motor Accidents Claims Tribunal, Chittorgarh in their  
Claim Case Nos. 549/2003 and 553/2003 respectively have

been heard together; and shall be governed by this common order.

In a vehicular accident that occurred on 04.07.2003 at about 3:00 p.m. on Chittorgarh-Bhilwara road a Maturi 800 car, occupied by eight members of the family, was hit by an oncoming truck bearing registration No. RJ07 G 5195; the occupants of car sustained varying injuries and four of them, including Mahesh Chandra and his wife Chanda Devi, succumbed on the spot. Three children of the said victim couple with their grandmother (the appellants) made the claims for compensation against the driver, owner and insurer of the offending truck. After receiving the replies, framing relevant issues, taking evidence, and hearing the parties, the Tribunal held that the accident that annihilated the couple occurred for rash and negligent driving of the truck aforesaid.

The Tribunal quantified compensation in the respective claim applications thus: In Claim Case No. 549/2003 in relation to the victim Mahesh Chandra, father of the claimants Nos. 1 to 3 and son of the claimant No. 4, the Tribunal referred to the assertion of claimants that he was earning about Rs. 5,000/- per month from his established shop of a general merchant at Gangrar, district Chittorgarh and noticed that no business accounts were produced; but observed that such assertion of the income of deceased from about 25 years old

grocer's shop could not be treated incorrect or excessive and that the non-applicants adduced no evidence to the contrary though the investigator of the insurer had visited the shop in question and found the son of deceased carrying on the business. However, thereafter, the Tribunal put an estimate on the business income at Rs. 3,000/- per month, and deducting one-third wherefrom, took annual loss of contribution for the claimants at Rs. 24,000/-; and taking the age of the victim indisputably in the group of 50-55 years applied multiplier of 11 to assess pecuniary loss at Rs. 2,64,000/-; and allowing Rs. 42,000/- towards general damages awarded compensation in the sum of Rs.3,06,000/-.

In Claim Case No. 553/2003 in relation to the victim Chanda Devi, mother of the claimants Nos. 1 to 3 and daughter-in-law of the claimant No. 4, the Tribunal referred to the assertion of claimants that she was earning about Rs. 3,000/- per month in tailoring and knitting job but observed that such could not be said to be definite and final income; and referred to the observations of the Hon'ble Supreme Court in Lata Vadhwa's case : 2001 ACJ 1735 that the loss in relation to a housewife may be taken at Rs.3,000/- per month but took 50% thereof towards loss of contribution for the claimants at Rs.1,500/- per month, i.e. Rs.18,000/- per annum; and again taking the age of the victim indisputably in the group of 50-55

years applied multiplier of 11 to assess pecuniary loss at Rs. 1,98,000/-; and again allowing Rs. 42,000/- towards general damages awarded compensation in the sum of Rs.2,40,000/-. In both the cases, the Tribunal allowed interest at the rate of 6% per annum from the date of filing of claim applications.

Assailing the award aforesaid as being low and inadequate, learned counsel for the appellants strenuously contended in respect of Claim Case No. 549/2003 that once the business income of the deceased Mahesh Chandra was accepted at Rs. 5,000/- per month there was no reason for the Tribunal to reduce such income to Rs.3,000/- per month; and then, upon deduction of one-third on personal expenditure and with application of multiplier of 11, the assessment of pecuniary loss only at Rs.2,64,000/- has been grossly inadequate. Learned counsel further contended that merely because the son of the victim continued with the business, quantum of loss could not be reduced because nevertheless one person more would be required to be employed. Learned counsel submitted in relation to Claim Case No.553/2003 that the deceased Chanda Devi was 47 years of age and the Tribunal has erred in taking her in the age group of 50-55 years and in applying a multiplier of 11; and that the Tribunal has erred in taking 50% even after assessing annual income of the victim at Rs.36,000/- per annum. Learned counsel has

referred to a decision of the Hon'ble Supreme Court in *Supe Dei & Ors. Vs. National Insurance Co. Ltd. & Anr.*: 2002(3) T.A.C. 378 to contend that the multiplier as provided by the Schedule appended to the Act ought to be applied for assessing just compensation. Learned counsel further submitted that the rate of interest allowed by the Tribunal at 6% per annum in the award made on 29.09.2005 in relation to the incident of 04.07.2003 is on the lower side.

Having given thoughtful consideration to the submissions made by the learned counsel and having scanned through the entire record, this Court is of opinion that though the award has been made by the Tribunal with and upon several uncertain findings; but the ultimate amount awarded towards compensation in each of the claim case cannot be said to be too low or grossly inadequate so as to warrant interference in appeal.

In the decision relied upon by the learned counsel, in relation to a victim in 32 years of age, the Tribunal and High Court proceeded to apply a multiplier of 15 without stating any reason and the Hon'ble Supreme court observed that considering the question of just compensation payable in a case, all relevant factors including appropriate multiplier are to be kept in mind and that the Second Schedule under Section 163-A to the Act can be taken as guideline while determining

compensation under Section 166 of the Act; and found for the said case that there was no reason why multiplier of 17 be not taken as the appropriate one.

In the present claim applications, the claimants, three children of the victim couple have been stated to be in the age of about 28 to 20 years; and their grandmother in the age of about 70 years. The age of victim Mahesh Chandra has been stated in the claim application at 50 years and in the postmortem report (Exhibit 13) at 51 years. The claimants stated the age of victim Chanda Devi at 47 years and that has been stated in the postmortem report (Exhibit 14) at 50 years. In the overall age status of the parties and for the husband and wife having perished in the same accident, the Tribunal cannot be said to have erred in applying the multiplier of 11 that is provided in the Second Schedule for the victims in the age group of 50-55 years, for the purpose of assessment of just compensation for the claimants in these cases.

So far the assessment of loss of economic dependency in relation to the victim Mahesh Chandra is concerned, the claimants asserted that he was earning about Rs. 5,000/- per month while managing a grocer's shop in the main market at Gangrar, District Chittorgarh and the investigator of the insurer NAW-1 Gaurav Inani, found the son of the victim continuing the said business but did not inquire about monthly income

from the shop in question. The Tribunal has, therefore, observed that the income of about Rs.5,000/- per month from an established grocer's shop of about 25 years could not be taken incorrect or an assertion on the higher side; and that the claimants' evidence has remained un rebutted. Then, the Tribunal has taken base figure of income at Rs.3,000/- per month for the purpose of assessing the loss of dependency and deducting one-third on personal expenditure of the deceased has adopted a multiplicand of Rs.24,000/- per annum.

A tentative observation made by the Tribunal that assertion of income from an established grocer's shop at Rs. 5,000/- per month is not excessive and cannot be taken incorrect does not ipso facto lead to the conclusion that such figure of income alone is required to be taken for the purpose of assessment of just compensation. The claimants have not produced any accounts or any other cogent documentary evidence to prove the income of the deceased. Then, the son of deceased, claimant No. 1, is continuing with the same business and hence, the relevant aspect that a part of the business income has retained itself to the claimants can neither be denied nor ignored. Therefore, entire of the broadly suggested income of the deceased from the business cannot be taken for the purpose of reasonable assessment of

pecuniary loss. In the overall facts and circumstances of the case, the base figure taken by the Tribunal at Rs.3,000/- per month for the purpose of assessment of pecuniary loss cannot be said to be erroneous; and assessment of pecuniary loss made on its basis at Rs. 2,64,000/-, though moderate, cannot be said to be grossly inadequate. Moreover, the Tribunal has allowed rather higher amount of Rs. 42,000/- towards general damages. In the ultimate analysis, the amount awarded by the Tribunal at Rs.3,06,000/- cannot be said to be falling too short of just compensation admissible in the fact situation of this case.

For assessment of pecuniary loss in relation to the mother of the appellants Nos. 1 to 3, the Tribunal has merely observed with reference to the decision of the Hon'ble Supreme Court in Lata Vadhwa's case (supra) that the loss in relation to a housewife may be taken at Rs.3,000/- per month and has, of course, stated about reducing half wherefrom; but again, on the facts and in the circumstances of the case, and looking to the dependency of the claimants, the ultimate amount of loss taken by the Tribunal at Rs. 1,500/- per month i.e., Rs.18,000/- per annum cannot be said to be grossly insufficient.

Viewed from another angle, the claimants asserted that the victim Chanda Devi was earning about Rs. 3,000/- per

month from tailoring and knitting job but failed to substantiate such assertion with any reliable evidence. If the victim be taken a non-earning person and a reasonable estimate is put on her notional income and loss of dependency of the claimants, in the overall fact situation of the case, the figure taken by the Tribunal at Rs.1,500/- per month, i.e. Rs.18,000/- per annum cannot be said to be inadequate. Then, with rather higher amount towards general damages at Rs. 42,000/-, the ultimate amount awarded by the Tribunal at Rs.2,40,000/- cannot be said to be too low or inadequate.

Having regard to the overall facts and surrounding circumstances, the rate of interest as allowed by the Tribunal at 6% per annum in the award made in the month of September 2005, though moderate, cannot be said to be improper or unjustified so as to be considered for revision in these appeals.

In the ultimate analysis, there appears no scope for enhancement over the amount of compensation awarded by the Tribunal in both the claim cases.

The appeals fail and are, therefore, dismissed summarily.

**(DINESH MAHESHWARI), J.**

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